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UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

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In re: :  
: Chapter 11  
MADISON 92ND STREET ASSOCIATES, LLC, :  
: Case No. 11-13917 (SMB)  
: Debtor. :  
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**COURTYARD MANAGEMENT CORPORATION'S STATEMENT  
IN RESPONSE TO THE MOTION FOR DISMISSAL, APPOINTMENT  
OF A CHAPTER 11 TRUSTEE OR APPOINTMENT OF A CHAPTER 11 EXAMINER**

TO: THE HONORABLE STUART M. BERNSTEIN,  
UNITED STATES BANKRUPTCY JUDGE

Courtyard Management Corporation ("Courtyard"), by its attorneys DLA Piper LLP (US), respectfully submits this statement in response (the "Statement") to the motion (the "Motion") of Robert Gladstone, Lucille Gladstone, John Leshner, and Andrew Harris for entry of an order dismissing the case pursuant to 28 U.S.C. § 1112(b), or in the alternative, appointing a chapter 11 trustee, pursuant to 28 U.S.C. § 1104(a)(1) and (2), or a chapter 11 examiner, pursuant to 28 U.S.C. § 1104(c)(1) [Dkt. No. 14]. In support of its Statement, Courtyard respectfully represents as follows:

**PRELIMINARY STATEMENT**

Courtyard files this Statement in support of that portion of the Motion that seeks the appointment of a trustee. Courtyard does not oppose the dismissal of the case pursuant to section

1112(b) of title 11 of the United States Code (the “Bankruptcy Code”). However, because it does not possess any factual information relevant to the portion of the Motion that seeks dismissal, this Statement focuses on the portion of the relief that seeks the appointment of a trustee.

From the perspective of Courtyard, the exclusive manager of the hotel located at 410 East 92nd Street in New York City (the “Hotel”), the internal disagreement among the members of the above-captioned debtor and debtor-in-possession (the “Debtor”) has impeded the Debtor’s ability to perform its duties as owner of the Hotel and, consequently, as a debtor in possession. Thus, Courtyard supports the appointment of a trustee. Such relief is necessary to bring stability to the Debtor’s operations, which is particularly important during this time when the Debtor is navigating through this chapter 11 case.

### **BACKGROUND**

1. On August 16, 2011 (the “Petition Date”), the Debtor filed a voluntary petition for relief under the Bankruptcy Code.

2. Pursuant to sections 1107(a) and 1108 of the Bankruptcy Code, the Debtor is operating its business and managing its property as a debtor in possession. As more fully described below, the Debtor has engaged Courtyard to exclusively operate and manage the Hotel located on the Debtor’s property.

3. No committee has been formed by the Office of the United States Trustee in this case. No trustee or examiner has been appointed by this Court.

4. Since the date the Hotel opened, Courtyard has managed and operated the Hotel pursuant to a Management Agreement by and between Courtyard and the Debtor, dated as of October 7, 2002 (as amended, the “Management Agreement”).

## **JURISDICTION**

5. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

## **RESPONSE TO THE MOTION**

6. Prior to the commencement of the chapter 11 case, Courtyard observed the destructive effect the internal dispute among the members had on the Hotel. The continuing deadlock among the members has apparently stalled the Debtor's internal decision-making processes.

7. As an example of this dysfunction, since July 2011, Courtyard has been attempting to hire a new general manager for the Hotel. Under the Management Agreement, the Debtor has certain rights in the interview process. Courtyard has contacted the Debtor on multiple occasions in an attempt to schedule interviews at a time when the appropriate Debtor representatives could be available, without any satisfactory response, thereby impeding and delaying the hiring process. To date, a new general manager has not been hired.

8. The lack of consensus and action on the part of the Debtor described above has continued through the filing of the petition. To date, the Debtor has failed to fulfill its obligations as a debtor in possession under the Bankruptcy Code notwithstanding Courtyard's offers to assist it in the collection and compilation of the Hotel's financial information. In fact, prior to the commencement of the chapter 11 case, Courtyard specifically reached out to the Debtor with an offer to provide any information the Debtor might need in the preparation of its chapter 11 petition or "first day" motions, but no response was ever received. Instead, the Debtor filed for bankruptcy without any prior notice to Courtyard and without filing any "first day" motions. The lack of notice placed a large strain on Courtyard as it worked to ensure that

the day to day operations of the Hotel were maintained and that the patrons of the Hotel remained unaffected by the bankruptcy filing.

### **CONCLUSION**

As set forth above, Courtyard does not oppose the dismissal of the Chapter 11 case. However, if the case is not dismissed, Courtyard supports the Motion to the extent it seeks the appointment of a trustee and respectfully requests that this Court appoint a trustee pursuant to Bankruptcy Code section 1104 and grant such other relief as the Court may deem just and proper.

Dated: September 6, 2011  
New York, New York

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